I therefore dismissed the appeals of both the company (first defendant) and the guarantor (third defendant) with costs.

Order accordingly.

Solicitors: *Hong Chew King & Co.; Zain & Co.*

MANJIT SINGH & 2 ORS. v. HO YONG SEE & ANOR.

[A.C.J. (Peh Swee Chin J.) May 23, 1987]

[Ipoh – Civil Appeal No. 38 of 1984]

Landlord and Tenant – Rent-controlled premises – Vacant possession – Claim for – Principles applicable to section 16(1)(f) of the Control of Rent Act 1966 – Only one co-owner requires the premises – Effect of.

The plaintiffs, the registered proprietors of certain controlled premises, claimed vacant possession of the same under section 16(1)(f) of the Control of Rent Act 1966. The plaintiffs were brothers: the first plaintiff a medical practitioner, the second plaintiff a soldier and the third plaintiff a police detective. It was not disputed that it was the first plaintiff alone who required the premises for himself and his family members.

The defendants carried on the business of pawnbrokers. Both the first plaintiff and the defendants gave their reasons to support their contentions. The learned magistrate gave judgment in favour of the plaintiffs. The defendants appealed from this decision.

Held, allowing the appeal: (1) the owner must establish a genuine present need and such need should not be purely based on considerations of reference and convenience. It must be something more than a mere desire but something less than an absolute necessity. The tenant will have to prove that greater hardship will be caused by granting the order of possession than by refusing it and in this connection, the test is hardship and not mere inconvenience. The onus of proving the availability of adequate accommodation is on the owner but the owner need not prove such accommodation to be a suitable alternative which implies some measure of quality in addition to some quantitative measure. Such onus of proving "suitable alternative accommodation" lies only in a case under section 16(1)(m) of the Control of Rent Act 1966;

(2) the learned magistrate had directed himself correctly on the question of the genuine present need. He had also dealt very correctly with the question of proof of greater hardship which the defendants had patently failed to establish. The learned magistrate had not erred when he came to the conclusion that the defendants had failed to prove any hardship at all;

(3) however, following *Liew Sam Lee* v. *Kwan Teck Meng & Ors.*[3] if the controlled premises are required by some but not all the joint owners, then the joint owners cannot recover the premises in question in an action of the kind under section 16(1)(f) of the Control of Rent Act 1966:

(4) in the circumstances, the appeal was allowed.

Cases referred to:

(1) *The Perak Hauliers Ltd.* v. *The Cycle & Carriage Co. Ltd.* [1962] M.L.J. 7.

(2) *Rajaratnam* v. *Gunn Lay Teik & Anor.* [1961] M.L.J. 199.

(3) *Liew Sam Lee* v. *Kwan Teck Meng & Ors.* [1964] M.L.J. 365.

CIVIL APPEAL.

I. Raj for the plaintiffs.
Henry Lim for the defendants.

Cur. Adv. Vult.

Peh Swee Chin J.: The plaintiffs, the registered proprietors of certain controlled premises, claimed vacant possession of the same under section 16(1)(f) of the Control of Rent Act 1966 which is set out below for convenience:

"16.(1) Except for an application made under sections 18 and 18A for the recovery of possession of any controlled premises or any part thereof for the purpose of effecting or causing to be effected thereon any development, all applications for the recovery of possession of such premises or any part thereof shall be made to a court; and no order or judgment for the recovery or possession of any controlled premises or any part thereof comprised in a tenancy shall be made or given by the court except in any of the following cases –

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) where the owner of the controlled premises reasonably requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in trust, and –

(i) there has been no change by purchase in the ownership of the premises since the fifteenth day of February, 1942; or

(ii) the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises within one year next preceding the date of such notice:

Provided that an order or judgment shall not be made or given on any ground specified in this paragraph if the court is satisfied that, having regard to all the circumstances of the case, including the question whether other accommo-

dation is available for the owner or the tenant, greater hardship would be caused by granting an order or judgment than by refusing to grant it:

Provided further that in the case of a controlled premises being used by the tenant for business, trade or professional purposes an order or judgment shall not be made or given on any grounds specified in this paragraph unless the court is satisfied that the owner requires them for the purpose of carrying on his own business, trade or profession;"

I will now deal briefly with the relevant parts of the evidence which revealed the plaintiffs to be brothers; the first plaintiff, a medical practitioner; the second plaintiff, a soldier and the third plaintiff a police detective. Further it was not disputed that it was only the first plaintiff who required the controlled premises in question for the purpose of setting up a medical practice there, with the other two plaintiffs supporting him in the action. In other words, the first plaintiff required the said premises for occupation by himself, and, presumably, by members of his own family. Members of a family, it is interesting to point out, would not include brothers: please see section 2 of the Control of Rent Act 1966.

The first plaintiff had already one medical practice on Pangkor Island, and he wanted to set up a clinic at the said premises situated within Sitiawan town. He had not acquired other premises in Sitiawan because of the high rent, a complaint shared by the defendants. He stated that if he set up the medical practice at the said premises, it was likely that he would close his clinic on the Pangkor Island because he wanted to avoid excessive travelling, living as he did in Sitiawan, and presumably having to travel daily to Pangkor Island; secondly, he had had a mild heart attack, and thirdly, he was working as a medical officer in the District Hospital in Lumut and he had come to know a lot of patients. People in Sitiawan have always been served by the District Hospital at Lumut if they want to be admitted to a hospital, there being no hospital in the town itself.

The defendants carried on the business of pawnbrokers. The second defendant in his evidence complained that their pawnbrokers' licence required them to carry out their business at the said premises. Any shift from the said premises would cause difficulties because a lot of valuables were involved. Further, the pawnshop had better security being quite near a police station. Their customers would lose confidence if they moved, and they would lose the customers who presumably were used to their place. It was not disputed that their pawnshop was the only one in town.

The principles applicable to a claim for possession of controlled premises under provisions like section 16(1)(f) of the Control of Rent Act 1966 were admirably and compendiously set out by Good J.A. in the case of *Perak Hauliers Ltd.* v. *Cycle & Carriage Co. Ltd.*[1] to the following effect.

First, the owner must establish a genuine present need, and such need should not be purely based on considerations of preference and convenience. It must be something more than a mere desire but something much less than an absolute necessity. Then the tenant will have to prove that greater hardship will be caused by granting the order of possession than by refusing it and in this connection, the test is hardship and not mere inconvenience. The onus of proving the availability of adequate accommodation is on the owner, but the owner need not prove such accommodation to be a suitable alternative which implies some measure of quality in addition to some quantitative measure; such onus of proving "suitable alternative accommodation" lies only in a case under section 16(1)(m) of the Control of Rent Act 1966.

I was in entire agreement with the learned magistrate who had directed himself correctly on the question of the genuine present need referred to in connection with the facts set out above. He also considered the case of *Rajaratnam* v. *Gunn Lay Teik and Anor.*[2], in which the fact that the owners' son already had a medical practice in Setapak in Kuala Lumpur at the time of the action did not preclude their claim for possession of the premises in question at Batu Road, Kuala Lumpur for the purpose of their son setting a medical practice also at the Batu Road premises.

The learned magistrate had also dealt very correctly with the question of proof of greater hardship which he held, on the evidence, the defendants had patently failed to establish. In my view, theirs was the only pawnshop in Sitiawan which would be sought after by people in dire need of money thus possessing in real terms the attributes of a monopoly. Shifting of valuables would be mere transient inconvenience. The learned magistrate had also pointed out that section 9(2) of the Pawn Brokers Act 1972 would permit a change of address of a pawnbroker's business. A pawnbroker has always a great deal of cash resources and cannot be described as impecunious when it comes to paying "non-controlled" rent for other premises, presumably more impressive premises which can

possibly enhance the confidence of his customers; I have said this because of the defendants' complaint of loss of their customer's confidence if they had to shift. The learned magistrate had not erred when he came to the conclusion that the defendants had failed to prove any hardship at all. Further, from the evidence which came also from the defendants, other available premises would appear to be more adequate. It is a notorious fact of which I may take judicial notice that a new township has been and is still being developed around and near the old town of Sitiawan. I would be surprised if there has not been already an excess of other accommodation in that new township and that such plentiful other accommodation has not already gone begging also.

Except for one unfortunate but decisive factor, the appeal of the defendants would have had no merit at all.

The unfortunate but decisive factor arose in this way. Of the three plaintiffs/registered proprietors, it was common ground that only the first plaintiff (a medical practitioner) required the controlled premises for occupation by himself, and presumably members of his family.

In the statement of defence filed, apart from a general prayer that the plaintiffs' claim be dismissed with costs, the defence stated, as per para 6 that: "The defendants state that on the other hand, there is only one of the plaintiffs who requires the said premises to operate a clinic and that ..."

The learned defence counsel made a pointed submission on the point before the learned magistrate as set out in his notes of the submission heard by him, appearing in the appeal record as follows:

"We must look at who is the actual landlord of this premises at No. 18, Jalan Sitiawan, Sitiawan. Looking at the evidence, there are three landlords – they are the first, second and third plaintiffs. The landlord being the registered co-owners of this premises which is a controlled premises within the Rent Control Act 1966. They sought to recover the premises under section 16(1)(f) of the Act. I submit that this section does not apply to the present case. This is so because in the present case, there are three owners. In the statement of claim, the plaintiffs said they want to use the premises for their own business. From the evidence adduced, the second and third plaintiffs are not medical men. It is only the first plaintiff who is a doctor. Therefore, only the first plaintiff actually requires the premises for his own use as a clinic."

I have quoted *in extenso* the submission of counsel for the defendants in the court below, principally because of another submission of the learned counsel for the plaintiff, advanced for the first time in this case before me on appeal, that the point of the first plaintiff being the only person requiring the said premises for a clinic had not been pleaded in the court below.

From paragraph 6 and the quoted notes of submission recorded by the learned magistrate, a reasonable reading of them would have left anyone in no doubt that the defence had raised the objection that only one of the three plaintiffs, and not all the plaintiffs, required the said premises for occupation by himself, an objection that went to the root of section 16(1)(f) of the Control of Rent Act 1966 under which the plaintiffs had claimed vacant possesion of the said premises. If the plaintiffs had entertained any doubt as to whether this objection was intended or not by the said paragraph 6 of the statement of defence, a short letter for particulars and addressed to the defendants' solicitors would have undoubtedly cleared the air. When the submission was made before the learned magistrate over the said objection, no complaint was made at all there about the submission being outside the pleadings or otherwise irrelevant. I did not think I could accede to counsel's submission that the point had not been pleaded in the court below, bearing in mind, in particular, that such submission was made for the first time on appeal before me. I very much suspect that this particular defence raised by the defendants had been taken far too lightly by the plaintiffs as either frivolous, or of no substance as not to merit a second glance. This wrong impression or the plaintiffs' complacency could have been brought about by the failure of the defendants to cite some reported cases to back up their argument.

There could not be the slightest doubt that only the first plaintiff required the said premises for occupation by himself or members of his family. Such being the case, the decision of the Federal Court in *Liew Sam Lee* v. *Kwan Teck Meng & Ors.*[3], by which I was bound, would prove to be the bane for the plaintiffs' claim for possession.

The effect of the Federal Court case is that if controlled premises are required by *some but not all the* joint owners, then the joint owners cannot recover the premises in question in an action of the kind under section 16(1)(f) of the Control of Rent Act 1966. There is no conceivable reason to suggest that the decision was given *per incuriam*

and it has guided the legal profession for well over twenty years.

In the circumstances, I therefore allowed the appeal of the defendants/tenants with costs against the plaintiffs/owners. I had further ordered that the deposit for security for costs be paid out to the defendants (respondents in this appeal) to account of costs to be taxed.

Appeal allowed.

Solicitors: *Raj Selva & Co.; Henry Lim & Co.*

PUBLIC PROSECUTOR v. HIEW CHIN FONG

[A.Cr.J. (Chong Siew Fai J.) May 21, 1987]

[Sibu – Criminal Appeal No. 1 of 1987]

Road Traffic – Driving without insurance cover – Whether a period of disqualification should be imposed – Special reasons needed for exemption from imposition – Road Traffic Ordinance 1958, s. 74(2).

The respondent was charged with two offences. The first offence was for using a motor van as a public service vehicle without a licence and the second offence was for using the same vehicle without an insurance cover in respect of third party risks. The respondent was convicted on both charges. On the first charge the respondent was fined $50 (in default one month's imprisonment). As for the second offence, the respondent was fined $100 (in default two weeks' imprisonment). No disqualification from driving was imposed on the respondent.

In the present appeal, the question was whether the magistrate should have imposed a period of disqualification from driving on the respondent. It was not disputed that special reasons had to be stated if no disqualification is imposed. The learned magistrate in the present case did not give any special reasons.

Held, allowing the appeal: (1) there were no special reasons justifying the relief from imposition of the disqualification;

(2) the respondent was disqualified from obtaining or holding a driving licence for a period of 12 months from the date of conviction.

Cases referred to:

(1) *Re Kanapathipillai & Ors.* [1960] M.L.J. 243.
(2) *Whittall* v. *Kirby* [1947] 1 K.B. 194.
(3) *Reay* v. *Young & Anor.* [1949] 1 All E.R. 1102.
(4) *Public Prosecutor* v. *M. Karthiah* [1953] M.L.J. 52.
(5) *Re Chan Eow Beng* [1961] M.L.J. 181.
(6) *Public Prosecutor* v. *Teoh Gaik Beng; Public Prosecutor* v. *Chuah Khay Soon* [1967] 2 M.L.J. 110.
(7) *In re Muniandy* [1954] M.L.J. 168.
(8) *Public Prosecutor* v. *Mohd. Isa* [1963] M.L.J. 135.

CRIMINAL APPEAL.

Abdul Rahman bin Sebeli (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Cur. Adv. Vult.

Chong Siew Fai J.: In the magistrate's court at Sibu, the respondent was charged as follows:

1. "That you, on the 15th day of October, 1986 at about 1330 hours at roundabout Tun Abang Hj. Openg Road, Sibu, in the State of Sarawak, being the driver of motor van No. SC 3716, used the said vehicle as a public service vehicle without there being in force in respect to the said vehicle a valid licence authorizing such use, and thereby you have committed an offence punishable under section 92(1) of the Road Traffic Ordinance 1958."

2. "That you, on the 15th day of October, 1986 at about 1330 hours, at roundabout Tun Abang Hj. Openg Road, Sibu, in the State of Sarawak, being the driver of motor van No. SC 3716, used the said vehicle without there being in force in relation to the vehicle a policy of insurance in respect of third party risks, and that you have thereby committed an offence under section 74(1) and punishable under section 74(2) of the Road Traffic Ordinance 1958."

On his own pleas of guilty, the respondent was convicted on both charges.

In his plea for mitigation which appeared to be directed mainly to the first charge, he said that he had applied for a permit several times but was refused, that driving the motor van as a "public service vehicle" was his source of livelihood and that he asked for leniency and forgiveness.

On the first charge, the respondent was fined $50, in default one month's imprisonment. Respecting this, there is no complaint. Nothing, therefore, need be said about that.

As for the second offence, the respondent was fined $100, in default two weeks' imprisonment. Apparently harbouring sympathy for the respondent, the learned trial magistrate warned the respondent and chose not to impose the disqualification from driving provided in section 74(2) of the Road Traffic Ordinance 1958.

Section 74(2) of the said Ordinance clearly provides a statutory disqualification of 12 months